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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,833	01/30/2002	Clinton S. Hartmann	RFSC-0006	4339

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EXAMINER

PATHAK, SUDHANSHU C

ART UNIT	PAPER NUMBER
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2611

DATE MAILED: 10/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/062,833

Applicant(s)

HARTMANN, CLINTON S.

Examiner

Sudhanshu C. Pathak

Art Unit

2611

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED October 5th, 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on October 5th, 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 11-20.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Attached "Response to Arguments".

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

DETAILED ACTION

1. Claims 11-20 are pending in the application.
2. Claims 1-10 have been canceled.

Response to Arguments

3. Applicant's arguments filed on October 5th, 2006 have been fully considered but they are not persuasive.
4. In regards to the argument that the McCorkle reference does not teach a pulse that encodes a data element by a unique phase and time position, this is incorrect.

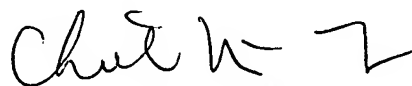
The McCorkle reference (2002/0064245) discloses implementing a combination modulation scheme such as PPM (pulse position modulation)-bi-phase modulation or a PPM-multilevel quadrature phase modulation wherein each data element is encoded with a unique time (PPM) and phase (bi-phase or multilevel quadrature phase modulation), this is explicitly disclosed in (Paragraph(s) 64, 66, 74 & 76-77).

5. In regards to the argument that there is no desirability of combining the AAPA with the McCorkle reference, this is incorrect.

The Office has provided a motivation to combine (i.e. desirability to combine the teaching of the McCorkle reference) the references as disclosed in the McCorkle reference (Page 6, Paragraph 77) "...so as to increase the bits per hertz transmitted as well as reducing the amount of transmitted power per symbol transmitted to transmit a predetermined amount of data...".

6. In regards to the argument the McCorkle reference does not teach or suggest that data can be encoded on a pulse spanning a period of time where such period of time is divided into a group of time slots, each of which has its own unique phase and time position, this is correct.

However, this limitation is taught by the AAPA in view of McCorkle i.e. a 103 rejection. The AAPA discloses data to be encoded on a pulse spanning a period of time where such period of time is divided into a group of time slots, each of which has its own unique time position (as is disclosed in the Final Rejection in the office action dated April 5th, 2006). However, the AAPA does not disclose the pulse to encode a data element not only by a unique time position but also by a unique phase position. This is disclosed in the McCorkle reference which teaches implementing a combination modulation schemes including PPM/bi-phase modulation and PPM/ multilevel quadrature phase modulation, thus providing both a unique phase and time.



CHIEH M. FAN
SUPERVISORY PATENT EXAMINER